

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION**

Zannie J. Lotharp, *a/k/a Zannie Jay
Lotharp,*

Petitioner,

v.

Warden M. Joseph,

Respondent.

Case No. 4:24-cv-136-RMG

ORDER

This matter is before the Court on the Report and Recommendation (“R&R”) of the Magistrate Judge, recommending that the Court deny and dismiss Petitioner’s petition for habeas relief under 28 U.S.C. § 2241. (Dkt. No. 9). Petitioner did not object to the R&R. For the reasons set forth below, the Court adopts the R&R as the order of the Court and denies and dismisses Petitioner’s petition for habeas relief without prejudice and without requiring Respondent to file a return.

I. Background

Petitioner, who is an inmate in a federal prison in Bennettsville, South Carolina, requests habeas relief on the ground that he is not a person within the meaning of the Fourteenth Amendment and seeks his immediate release from custody. (Dkt. No. 1-1 at 2,8). On January 18, 2024, the Magistrate Judge issued an R&R recommending that the Petition be dismissed without prejudice and without requiring the respondent to file a return. (Dkt. No. 9). The Magistrate Judge noted that Petitioner filed a very similar petition previously, which was dismissed by this Court on November 7, 2023 as “legally frivolous and fails to state a cognizable claim under § 2241. *Lotharp v. Joseph*, C.A. No. 4:23-4769 (D.S.C. 2023). Petitioner was advised that he had 14 days from receipt of the R & R to file written objections, and if he failed to do so, limited clear error review

would be conducted by the District Court and there would be a waiver of the right to appeal. (Dkt. No. 9 at 4). Petitioner did not object to the R&R. This matter is ripe for the Court's review.

II. Legal Standard

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility for making a final determination remains with this Court. *See Mathews v. Weber*, 423 U.S. 261, 270–71 (1976). This Court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made. Additionally, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Where the Petitioner fails to file any specific objections, “a district court need not conduct a *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (internal quotation omitted). Because Petitioner did not file objections to the R&R, the Court reviews the R&R for clear error.

III. Discussion

The Court finds that the Magistrate Judge ably addressed the issues and correctly concluded that Petitioner's petition should be dismissed without prejudice and without requiring the Respondent to file a return.

Conclusion

For the reasons set forth above, the Court adopts the R&R (Dkt. No. 9) as the Order of the Court and denies and dismisses Petitioner's petition for habeas relief without prejudice and without requiring Respondent to file a return.

AND IT IS SO ORDERED.

s/ Richard M. Gergel
Richard M. Gergel
United States District Judge

February 6, 2024
Charleston, South Carolina